IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10368 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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AGRICULTURE PRODUCE MARKET COMMITEE & ORS.- Petitioner(s)
Versus
STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
MS JIRGA D. JHAVERI for Petitioner(s).
MR. L.R. PUJARI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1, 12.
MS. AVANI S. MEHTA who is appearing for respondent Nos.2 to 11 has filed a Leave Note.
NONE for Respondent(s) : 13.
MRS. SANGEETA PAHWA for
M/S. THAKKAR ASSOCIATES for Respondent(s) : 14 - 38.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/12/2006

ORAL JUDGMENT

1. Ordinarily, the Judges of this Court are accommodating the lawyers once they file Leave Notes,

but, every time the Judge commits breach of the Circular by adjourning the matter on the strength of the Leave Note. It is to be seen that Rule 132(ii) of the Gujarat High Court Rules, 1993, clearly specifies that a note submitted under the rule shall not apply to the criminal case, Special Civil Applications and matters specially fixed for hearing or expedited by the order of the Court and matters on the daily board. The matter on hand is a Special Civil Application and is on the daily board. In view of Rule 132(ii) and the order, which I propose to pass, I do not wish to adjourn the matter.

2. Ms.Jirga Jhaveri, learned Counsel for the petitioners, submits that some of the respondents had filed a revision petition before the State Government and in accordance with the distribution of business, the same was to be heard by the Deputy Secretary or so. According to her, the Secretary holding the regular office was probably on leave or under transfer, therefore, the Office was held by In-charge Deputy Secretary. The said In-charge Deputy Secretary started hearing the matter with effect from 26th July, 1995. The arguments were concluded on 7th August, 1995, but, before the judgement could be delivered by the said In-charge Secretary, the regular Deputy Secretary had taken the charge of the

Office of the Deputy Secretary (Appeals). According to her, the then In-charge Deputy Secretary delivered the judgement on 1st December, 1995, that too, after he was removed from the charge and the regular Deputy Secretary had taken over the charge. She submits that the judgement delivered by the said In-charge Deputy Secretary even after his transfer from the Office would be bad and illegal.

3. I pointedly asked Mr. L. R. Pujari, learned Assistant Government Pleader for the State that how could that In-charge Deputy Secretary deliver the judgement in the matter if on the date of the delivery of the judgement, he was not holding the Office of the Deputy Secretary (Appeals). Mr. L. R. Pujari, learned Assistant Government Pleader, though submitted that the order is justified, but, was unable to say that any person even after he demits the Office would be entitled to deliver the judgement.

4. In a case where the Office is held by some In-charge Officer as a stop gap arrangement, then, actions taken by him or the orders, etc. passed by him within the period he was holding the Office would be taken to be valid because such person would be held to be the regular

Officer entitled to hold the Office. If the In-charge Deputy Secretary was removed from the Office or had to demit the Office with effect from 1st October, 1985, then, he lost all his jurisdiction to pass any order or take any action in his capacity as an In-charge Deputy Secretary.

5. It is trite to say that a person, who holds Office, would be entitled to pass an order and if a person, who does not hold the Office on the date of the order or the action, passes an order, then, such action cannot be protected simply on the ground that on the date of hearing, he was holding the Office. One must not forget the distinction between the holding of the Office and holder of the Office. In the present case, the In-charge Deputy Secretary was holding the Office on the date when he heard the matter, but, on the date when he delivered the judgement he was not the holder of the Office.

6. The authority, which has to exercise judicial, quasi judicial powers, must show that it is authorised to pass the order on the date when the order was delivered. If such person fails in proving his authority, then, the Court is entitled to issue a writ of *qua warranto* against

such Officer asking him that under what authority of law, he has done a particular act. Present is a case where on the date of delivery of the judgement, the person, who passed the order, was not holding the Office. He was *forum non judice*. He had no jurisdiction to hear or decide on 1st December, 1995 because on 1st December, 1995, he was neither the In-charge Deputy Secretary nor was entitled to hold the Office in view of the fact that regular appointment was made.

7. The order passed by the then regular Deputy Secretary (which is also clear from the designation shown in the order impugned) cannot be allowed to stand. It deserves to and is, accordingly, quashed. The matter is remitted to the Deputy Secretary (Appeals) to hear the matter in accordance with law. The petitioners and the intervenor-respondents shall appear before the concerned Deputy Secretary on 12th January, 2007 and may produce a copy of this order, enabling the Deputy Secretary (Appeals) to note that he is required to decide the matter afresh. The Deputy Secretary (Appeals) shall proceed to decide the matter after issuing appropriate notices to respondent Nos.2 to 11 and 13. He shall be obliged to issue notices to them immediately. He shall see that the notices are served. If required, he may

serve the respondents (applicants before him) through personal messenger. After securing the attendance or after effecting the service of notices on the party respondents of this Writ Application, he shall decide the matter within a period of three months from the date of receipt of copy of this order, without being influenced by the order dated 1st December, 1995. The petition to the extent indicated above is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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